

EXHIBIT 187

1
2 ** C O N F I D E N T I A L **
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF NEW YORK
5 Master File No. 09-MD-2058 (PKC)

6 -----x
7
8 IN RE BANK OF AMERICA CORP. SECURITIES,
9 DERIVATIVE AND EMPLOYMENT RETIREMENT
10 INCOME SECURITY ACT (ERISA) LITIGATION
11
12 -----x

13 THIS DOCUMENT RELATES TO
14 All Securities Actions
15
16 -----x

17 IN THE COURT OF CHANCERY
18 OF THE STATE OF DELAWARE
19 C.A. No. 4307-CS
20
21 -----x

22 IN RE BANK OF AMERICA CORPORATION
23 STOCKHOLDER DERIVATIVE LITIGATION
24
25 -----x

 March 8, 2012
 9:31 a.m.

 Videotaped Deposition of NELSON CHAI,
taken by Plaintiffs, pursuant to Subpoena,
held at the offices of Kaplan Fox &
Kilsheimer LLP, 850 Third Avenue, New
York, New York, before Todd DeSimone, a
Registered Professional Reporter and
Notary Public of the State of New York.

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2 earnings release that we looked at, an
3 effort to derisk the balance sheet and
4 reduce the balance sheet and this was a
5 reflection of those efforts; is that
6 correct?

7 A. This is a reflection of the
8 actions we took, yes.

9 Q. Separately, while we are on
10 this document, look at page 5.

11 A. Page 5 of the document?

12 Q. Yes. There is a line item,
13 this is the income statement, profit and
14 loss statement, there is a line item under
15 Noninterest Expenses for Compensation and
16 Benefits. Do you see that?

17 A. Uh-huh.

18 Q. And that line item for
19 September -- for nine months ending
20 September 2008 is \$11,170,000,000 and for
21 the same period the previous year was
22 \$11,564,000,000.

23 How are these -- how is
24 compensation and benefits determined
25 during the course of the year?

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2 MR. LIMAN: Objection, lack of
3 foundation.

4 A. Well, during the course of the
5 year it is just an accrual where you put a
6 placeholder in, and then at year-end,
7 depending on the actions of the Comp
8 Committee of the board, you might make an
9 adjustment in the fourth quarter to add or
10 decrease, depending on the outcome. And
11 then you pay it out. But at this point it
12 was an accrual.

13 Q. And how was the rate of accrual
14 determined?

15 A. Again, I don't remember back
16 how we did it back then, but it would have
17 been driven by our head of HR, and then it
18 would have been a few people that, you
19 know, there would have been a conversation
20 around.

21 Q. Is the accrual in the first
22 three quarters, the first nine months of
23 the year, based on performance, or was it
24 a fixed number or fixed percentage of, you
25 know --

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2 notes is that in the financial summaries,
3 the pacing things that Nancy used to do,
4 that we had losses in the forecast files.

5 Q. And did those losses in the
6 forecast files from Nancy Meloth, were
7 they communicated to Mr. Cotty?

8 A. Again, Mr. Cotty had access to
9 all the information, as I established, in
10 the fourth quarter. I don't know -- and I
11 believe he got whatever I got, but I don't
12 know.

13 Q. Thinking back now, do you think
14 that from November 4th certainly that
15 Mr. Cotty was receiving forecasts from
16 Ms. Meloth reflecting the losses?

17 A. I believe --

18 MR. LIMAN: Objection to the
19 form.

20 A. I believe certainly in November
21 and then post that Mr. Cotty was receiving
22 whatever information I was receiving from
23 Ms. Meloth.

24 Q. And then the last paragraph
25 here, can you tell me what that says?